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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,910	09/10/2003	Tom Blanchester	TLA03,05	3610
27165	7590	01/05/2006	EXAMINER	
YI LI			TYLER, STEPHANIE E	
CUSPA TECHNOLOGY LAW ASSOCIATES			ART UNIT	
11820 SW 107 AVENUE			PAPER NUMBER	
MIAMI, FL 33176			3754	

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/658,910	BLANCHESTER, TOM	
	Examiner	Art Unit	
	Stephanie E. Tyler	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 27, 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>09/10/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

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Detailed Action

Election/Restrictions

1. Applicant's election with traverse of Figures 1-8B, 11 and 12 in the reply filed on November 21, 2005 is acknowledged. The traversal is on the ground(s) that the election is improper because it must be determined by both the practice applicable to election of species and the practice applicable to other types of restriction. Also that the inventions are not independent and distinct. Further that the embodiments fall within the same general search and would not require any undue searching by the Examiner. This is not found persuasive because there is not a common field of search. The different field of search employs a different search query of electronic databases to search the different shapes of each embodiment. Therefore, it would put a serious burden on the Patent Office.

The requirement is still deemed proper and is therefore made FINAL.

1. Claims 14-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 21, 2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

3. Claims 1, 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Walthers (6,010,034).

Walthers discloses in figures 1 through 3 a bottle cap (170) for a neck (132) of a bottle having a cap body (170,171,172) with a lower portion that is shaped to connect with the bottle neck (132). Walthers further discloses a bottle cap having an upwardly protruding nozzle (150) at an upper portion of the bottle cap (170) having a closing lid (151), and a telescopic straw (160).

Regarding claim 3 note in Figures 1 through 3 that the protruding nozzle defines a nozzle wall, a pump button that is associated with a spray pump of the cap body, a spray pump that is equipped with a spray nozzle that is directed substantially in a normal direction to the nozzle wall and away from an exposed surface of the nozzle wall.

Regarding claims 4 and 5 note in Figures 1 through 3 that the bottle cap has a lower edge of the nozzle wall that extends to an upper portion of a first sidewall that is associated with a channel of the cap body. Also the channel has an opposite second sidewall that is adjacent to the perimeter of the bottle cap. Further, the upper surface of the pump button has a concave shape that has a length that is substantially parallel to the nozzle wall.

Regarding claim 6 note in Figure 3 that the bottle cap has a closing lid that is connected to the exterior of the lower portion of the cap body by being swingably attached to the shaft (161).

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4. Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lau (5,799,873).

Lau (5,799,873) discloses in Figure 1 through 3 a cap body having a lower portion with internal threads for the connecting neck of the bottle, a upper portion having a protruding nozzle (104), an outlet opening (106) of the protruding nozzle for dispensing liquid. Further, the cap body has a spray assembly with a press pumping mechanism (104) connected to an aspiration tube (409), a pump button that extending upwardly, a spray nozzle (104) that is perpendicular to a longitudinal axis of the cap body. Also the spray assembly of the cap body is positioned next to the protruding nozzle.

Regarding claim 8 note in Figure 1 through 3 that the multifunctional cap body has a protruding nozzle that defines the nozzle wall, a pump button that is placed adjacent to the nozzle wall, a spray nozzle that is directed away from an exposed surface of the nozzle wall, a lower edge of the nozzle wall that extends to an upper portion of a first sidewall, that is associated with a channel of the cap body. Further the channel of the cap body has an opposite second sidewall that is adjacent to the circumference of the bottle cap. Also the pump button of the cap body is situated in the channel between the sidewalls and thus the nozzle wall and the sidewalls guide the finger of a user for activating the pump button substantially in a direction parallel to the nozzle wall.

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Regarding claim 9 note in Figures 1 through 3 that the cap body has an upper surface of the pump button, which has a contour with a length that is substantially parallel to the nozzle wall.

Regarding claim 10 note in Figure 3 that the cap body has a straw (108) with sufficient length, such that the lower end of the straw extends to the bottom of the bottle when the straw is in a retrieved position.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walthers (6,010,034) in view of Pugh (2,805,809).

Walthers (6,010,034) discloses a bottle cap having a neck, a cap body, an upwardly protruding nozzle at the upper portion of the bottle cap, an outlet opening at the edge portion of the nozzle for dispensing liquid, a closing lid, and a telescopic straw. However the Walthers (6,010,034) reference lacks a telescopic straw with a first straw portion and a second straw portion; with the second straw portion being axially movable and extending upwardly out of the nozzle.

Pugh (2,805,809) discloses a container (1) in Figure 2 through 4 with a telescopic straw having an outer straw section (23) and an inner straw section (21) for the purpose having the outer straw section with an "collar (27) at the upper end of the container to prevent the outer section from being pulled upwardly out of the opening" (col. 2, lines 6-8); and a inner straw section for sliding and extending out container for sipping purposes (col. 1. lines 71,72; col. 2 lines 1,2,11-13, 24-28). Further the inner straw section has a collar (25) for the purpose of gripping with the mouth and sipping purposes.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the Walthers (6,010,034) bottle cap with a telescopic straw having inner and outer straw sections as taught by Pugh (2,805,809) in order to have the telescopic straw be secured in place and be able to move and extend, so consumers can place their mouth on straw when in use.

7. Claims 7,11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lau (5,799,873) in view of Pugh (2,805,809).

Lau (5,799,873) discloses in Figure 1 through 3 a cap body having a lower portion with internal threads for the connecting neck of the bottle, a upper portion having a protruding nozzle (104), an outlet opening (106) of the protruding nozzle for dispensing liquid. Further, the cap body a has spray assembly having a press pumping mechanism (104) connected to an aspiration tube (409), a pump button that extending upwardly, a spray nozzle (104) that is perpendicular to a longitudinal axis of the cap

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body. Also the spray assembly of the cap body is positioned next to the protruding nozzle.

However, Lau (5,799,873) reference lacks a telescope straw with a first straw portion and second straw portion with the second straw portion being axially movable and extending upwardly out of the nozzle. Further the reference lack the lower portion of the telescope straw being flexible.

Pugh (2,805,809) discloses a container (1) in Figure 2 through 4 with telescope straw having an outer straw section (23) and an inner straw section (21) for the purpose having the outer straw section with an "collar (27) at the upper end of the container to prevent the outer section from being pulled upwardly out of the opening" (col. 2, lines 6-8); and a inner straw section for sliding and extending out container for sipping purposes (col. 1. lines 71,72; col. 2 lines 1,2,11-13, 24-28). Further Pugh discloses that the telescope straw can be a tube (col.1, line 17) for the purpose of being is flexible. Moreover in Figure 2, Pugh discloses that the outer straw section extends close to the bottom of the bottle when the inner straw section is moved upward to an extending position for drinking.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Lau (5,799,873) bottle cap with a telescopic straw having inner and outer straw sections as taught by Pugh (2,805,809) in order to have the telescopic straw be secured in place and be able to move and extend, so consumers can place their mouth on the straw while in use.

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8. Claim 13 is rejected under 35 U.S.C. 103(a) as being obvious over Walthers (6,010,034).

The Walthers (6,010,034) teaches to have a closing lid with a "swingably attached shaft" (161) for the purpose of closing and opening to the opening of the protruding nozzle.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the Walters closure cap (151) with the bendable closing lid (161) in order for the spraying nozzle to have easier access and no misplacement of lid.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie E. Tyler whose telephone number is 571-272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 517-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SET

A handwritten signature in black ink, appearing to read "Michael Mar".

MICHAEL MAR
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700